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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1950

No. 495

THOMAS E. HAYES, et al., on Behalf of Himself and All Others Similarly Situated,

Petitioners,

vs.

UNION PACIFIC RAILROAD CO. (a corporation) and DINING CAR EMPLOYEES UNION LOCAL 372 (a voluntary unincorporated labor organization); and JAMES G. BARKDOLL, as District Director of said Local 372 in the District of Los Angeles, State of California,

Respondents.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

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To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Thomas E. Hayes and those named with him as parties plaintiff and appellant in the Courts below respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit entered in the above entitled cause (R. 192), together with the order of the said Court denying a rehearing (R. 193), which decisions affirmed the decision of the District Court of the United States for the Northern District of California, Southern Division. (R. 136, 163, 164.)

OPINIONS BELOW.

The opinion of the District Court is reported at 88 F.S. 108; the order denying petitioners' motion for leave to file an amended complaint and set aside the order of dismissal (R. 163, 164) is not reported. The opinion of the Court of Appeals is reported at 184 F. (2d) 337. The decision of the Court of Appeals denying rehearing is not reported.

JURISDICTION.

The judgment of the Court of Appeals was entered August 30, 1950. The order of the Court denying re-

hearing was entered October 20, 1950. Jurisdiction of this Court is invoked under 28 U.S.C.A. Section 1541 (1).

STATUTE INVOLVED.

Railway Labor Act, Section 2, 45 U.S.C.A. Section 152, Fourth, provides as follows:

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, that nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or

local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

QUESTIONS PRESENTED.

1. Where discrimination in seniority, wages and working conditions is practiced against Negro members of a craft or class of railroad employees by reason of their race or color, by the sole collective bargaining representative of the class under the Railway Labor Act, and by the railroad, under the terms of a collective bargaining agreement which does not expressly provide for, but which by its terms permits the discriminatory practices of the union and the railroad, is exhaustion of administrative remedies before the National Railroad Adjustment Board a jurisdictional prerequisite to the granting of relief by the courts?

2. Do unions acting as sole bargaining agents under the Railway Labor Act have a duty imposed by the Act to protect all members of the class represented in the *performance* of collective bargaining agreements against race discrimination by the railroad? If this question is answered in the affirmative, may railroads knowingly participate in discriminatory performance of the collective bargaining agreement?

A third question not relied upon for the granting of the writ, but which petitioner wishes to preserve for possible presentation if the writ is granted is as follows:

3. Is due process of law afforded an appellant who appeals from a decision of the Presiding Judge of a United States District Court to a United States Court of Appeals, where the panel of the Court of Appeals which hears and decides the case, is composed of one judge of the Court of Appeals, and two judges of the District Court from which appeal is taken?

STATEMENT OF THE CASE.

This case comes before this court on affirmance by the Court of Appeals (R. 191) of an order of the District Court dismissing the complaint for lack of jurisdiction (R. 143), and denying a motion for leave to file an amended complaint. (R. 163, 164.) The judgment of the District Court makes clear, however, that the proposed amended complaint was considered by the Court before entering the judgment of dismissal. (R. 163, 165.)

The complaint alleged that plaintiffs below, petitioners here, are Negro members of a craft or class of Railroad employees, dining car workers, represented by the respondent union, Dining Car Employees Local 372, in collective bargaining with respondent railroad, the Union Pacific Railroad Company. (R. 4, 5.) It alleged that under a collective bar-

gaining agreement entered into by the two respondents (R. 5), Negro employees of the railroad here, upon their initial employment, were assigned seniority in a certain Group, designated Group B, solely by reason of their color, while white employees similarly assigned were always placed initially in a higher Group, designated Group A, solely because they were white. (R. 5, 6.)

It was not alleged, and it is not the case, that the collective bargaining agreement *required* this discrimination by its terms. It merely set up the two seniority Groups, with others not material here, and provided of the assignment of new employees to a group, for seniority purposes, in the Group and Class designated by the Railroad. (R. 5.)

This discrimination resulted, it was alleged, in materially larger pay and allowances for white than for Negro employees (R. 6), and, taken together with the provision of the collective bargaining agreement setting forth the method of acquiring seniority in higher Groups or Classes resulted in a permanent discrimination in favor of white employees. (R. 6, 7.)

The respondent Union is alleged to have connived with the respondent Railroad in these practices (R. 5, 6, 7), and both respondents are alleged to have refused, in spite of protest by petitioners and their representatives, to refrain from this discrimination. (R. 8, 9.)

It was alleged that the only administrative remedy available to petitioners was before such bodies of the

Union and the Railroad as had already acquiesced in the perpetuation of these practices. Plaintiffs sought an injunction, damages and a declaration that these practices are unlawful.

On motion of the respondent Union (R. 32), and respondent Railroad (R. 38), this complaint was ordered dismissed on January 19, 1950, but, before the order of dismissal was signed and filed (R. 163), petitioners filed a motion for leave to file an amended complaint. (R. 144.) This complaint was considered by the District Court along with affidavits not material to the question petitioners present here, and with oral argument of Counsel. The judgment of dismissal made and filed February 13, 1950 (R. 163, 164), was on the grounds that there was no issue as to any material fact, and that the defendants were entitled to a judgment of dismissal as a matter of law. This referred to the rule expressed in the opinion of January 19, 1950 (R. 136), that the Railway Labor Act imposes no duty on a collective bargaining agent not to discriminate on the basis of race, except with respect to collective bargaining and the making of contracts (R. 141), and that, since the complaint failed to allege that the contract was *per se* discriminatory (R. 140), the Court was without jurisdiction to entertain the case. (R. 143, 144.)

The proposed amended complaint alleged, in a first cause of action all the material in the original complaint, as set forth above (R. 145-154.)[1] In a second

[1]Some allegations of the original complaint not discussed and not material here were omitted or changed in the first cause of action of the amended complaint.

cause of action, the complaint alleged that the respondents Union and Railroad, conspired together to discriminate against Negro employees in the Dining Car Department by arbitrarily assigning them to seniority Group B and Classes IV and V and white employees to Group A and Classes II and III. (R. 154.) It was alleged that, by reason of this discrimination, the pay of the Negroes was less than that of the white employees. (R. 155.) It was further alleged that the collective bargaining agreement provided no mode of determining to which Group or Class new employees should be assigned, but that it was the existing practice, which the Railroad and Union verbally agreed to continue, to assign whites to Group A and Negroes to Group B. (R. 155, 156.) It was also alleged (R. 155), that the collective bargaining agreement, as modified by this verbal agreement, was discriminatory and in violation of the Railway Labor Act.

It was further alleged in the second cause of action (R. 157) that, by reason of this discrimination, the petitioners can never overcome the initial handicap imposed upon them because they can accumulate seniority in higher Groups or Classes only from the date of their assignment therein.

Plainly put the situation is this:

A Negro and a white employee hired on the same day and possessing the same qualifications can never have the same seniority since the initial seniority classification is made on the basis of race alone, and places the white man in the higher Class or Group.

REASONS FOR GRANTING THE WRIT.

1. **The decision below is in conflict with the applicable decisions of this Court in two respects:**

(a) It holds that petitioners must exhaust their administrative remedies before the Railroad Adjustment Board before the federal courts can grant relief.

(b) It holds that the Railway Labor Act imposes no duty on collective bargaining agents under the Act to protect minority members of the represented class in the performance of collective bargaining agreements.

(a)

The Court of Appeals adopted the opinion of the trial Court and added to it the following language:

> "We add to it only to the extent of saying that it is clear to us that the Federal Courts are not charged by federal law with the duty or function of policing the parties in the performance of collective bargaining agreements entered into pursuant to the Railway Labor Act. Congress did not, by the Railway Labor Act, grant jurisdiction to the Federal Courts to afford relief for breaches of performance of collective bargaining agreements. Appropriate tribunals have been established for that purpose. 45 USC § 153, National Railroad Adjustment Board; Slocum v. D. L. & W. R. Co., 339 U. S. 239. It is only when collective bargaining agreements are unlawfully entered into or when the agreements themselves are unlawful in terms or effect, that federal courts may act. This is made quite clear by the Supreme Court in Steele v. L. & N. R. Co., 323 U. S. 192,

> and Tunstall v. Brotherhood, 323 U. S. 210. The disposition of the cause made by the District Court is correct." (R. 190-191.)

There appears to be no room for any doubt that this Court in *Slocum v. Delaware, L. & W. R. Co.* excepted from the operation of that opinion the situation presented here, where the petitioners are minority members of a class represented by the respondent Union, and complaining of discrimination by that respondent. This Court in Footnote 7 to the majority opinion in the *Slocum* case said:

> "We are not confronted here with any disagreement or conflict in interest between an employee and his bargaining representative as in Steele v. Louisville & N. R. Co., 323 U. S. 192, 89 L. Ed. 173, 65 S. Ct. 226 * * *"

The situation in the *Slocum* case was completely unlike the situation in this case, and, as this Court pointed out in the *Slocum* case, that was a case where the appropriate tribunal was the Adjustment Board.

The *Steele* and *Tunstall* cases have been construed by numerous state courts. In each of those, the *Steele* and *Tunstall* decisions were construed to give courts jurisdiction to grant relief against discrimination by the collective bargaining representative of a minority without exhaustion of administrative remedies.

In *Crowell v. Palmer,* 134 Conn. 502, 58 Atl. (2d) 729, the Supreme Court of Errors of Connecticut in 1948 considered an action by non-members of a railroad union, which was the sole bargaining agent for

the class in which the plaintiffs belonged, for injunctive relief against discrimination practiced by the union and the railroad company in the distribution of overtime work. In that case the plaintiffs had started a proceeding before the Railway Adjustment Board but had been unable to secure a hearing. The Court below granted a non-suit on the ground that they must exhaust their administrative remedy before the Board. The Supreme Court of Errors reversed, holding that the plaintiffs in that case had no administrative remedy and that the jurisdiction of the Court to grant relief was untouched by the Railway Labor Act.

In *Betts v. Easley,* 161 Kan. 459, 169 Pac. (2d) 831, the Supreme Court of Kansas in 1946 had before it a suit for injunction by Negro railway workers who sought to prevent discrimination by the union representing them and the railroad. The Kansas Court held it had jurisdiction although there had been no resort to the Railroad Adjustment Board.

In *Edelstein v. Duluth M. & I. RR. Co.,* 225 Minn. 519, 31 N.W. (2d) 465, the Supreme Court of Minnesota held that the courts have jurisdiction, even though administrative remedies under the Railway Labor Act were not exhausted, to hear a suit for back pay for discharge in violation of the seniority rights set up under the collective bargaining agreement.

In *Griffin v. Gulf & Ship Isle R. Co.,* 198 Miss. 458, 21 So. (2d) 816, the Supreme Court of Mississippi in 1945 heard an appeal from a decree sustaining a demurrer and dismissing the complaint of Negro fire-

men who sought to restrain the railroad from putting into effect an award of the Railroad Adjustment Board. The gravamen of the plaintiffs' complaint was that the award denied plaintiffs their seniority rights under a collective bargaining agreement. The award of the Adjustment Board had been obtained by the union and the railroad without disclosing to the Board the discriminatory effect it would have. The Mississippi Court held that the award was not *res judicata* and not binding upon the plaintiffs in that case because they had never been before the Board. The decision below was reversed. This was clearly a decision that plaintiffs who had not exhausted their remedies before the Board, since they had never been before the Board, could appeal to the Court for relief.

Compare *State ex rel. St. Louis-San Francisco Ry. v. Russell,* 356 Mo. 975, 219 S.W. (2d) 340, where the Supreme Court of Missouri held that the *Steele* and *Tunstall* rules did not apply when the dispute was between Negro train porters, represented by their own collective bargaining agent, and the railroad, over the elimination of jobs formerly filled by the petitioners, and their assignment to members of other collective bargaining agents. See also *Washington Terminal v. Boswell,* 124 F. (2d) 235, and *Edwards v. Capitol Air Lines,* 176 F. (2d) 755, the latter case holding that the award of a mediation board set up under the Railway Labor Act in a dispute between a minority represented by the union whose interests were in conflict with the interests of the majority, and the railroad, was judicially reviewable despite the contract lan-

guage making such awards final and binding, because where the minority was represented in proceedings by the union it could not be presumed that it got a fair hearing.

(b)

Although both Courts below relied upon the decisions of this Court in the *Steele* and *Tunstall* cases (R. 137, 191), there appears to be a direct conflict between the *Steele* and *Tunstall* decisions and the decision of the Court of Appeals.

The District Court here held that the Railway Labor Act imposed upon the collective bargaining agent alone a duty not to discriminate, and that this duty was "only with respect to collective bargaining and the making of contracts." (R. 141.) Since the complaint did not allege that the contract as drawn was discriminatory, but that only the *conduct* of the parties discriminated against the plaintiffs, the district judge held that the complaint alleged no violation of the duty imposed by the Railway Labor Act. (R. 141.)

The Court of Appeals adopted the opinion of the district judge, saying,

> "We add to it only to the extent of saying that it is clear to us that the federal courts are not charged by federal law with the duty or function of policing the parties in the performance of collective bargaining agreements entered into pursuant to the Railway Labor Act. Congress did not, by the Railway Labor Act, grant jurisdiction

to the federal courts to afford relief for breaches of performance of collective bargaining agreements."

This interpretation of the decisions of this Court in the *Steele* and *Tunstall* cases appears to be completely inconsistent with the decisions, and unsupported by any language appearing therein. In the first paragraph of the opinion Mr. Chief Justice Stone stated the question as follows:

> "The question is whether the Railway Labor Act imposes on a labor organization acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees the duty to represent all the employees in the craft without discrimination because of their race and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation." (323 U.S. 193, 194, 89 L.Ed. at 178.)

In summary, the Court stated its decision in the following language:

> "We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses *the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to fairly exercise the power conferred upon it on behalf of all those for whom it acts, without hostile discrimination against them.*" (323 U.S. at 202, 89 L.Ed. at 183.) (Italics supplied.)

No language supporting the interpretation of the Court of Appeals is cited by that Court in its opinion.

No such language appears in the decisions of this Court. Is the proposition, that the collective bargaining agent owes no duty to protect minority members of the class it represents in the *performance* of collective bargaining agreements, consistent with the proposition that the Railway Labor Act expresses the aim of Congress to impose on the bargaining representative the duty to *fairly exercise the power conferred upon it* on behalf of all those whom it represents, without hostile discrimination against them? The answer to this question is evident when it is considered that if its duty is confined to the formation of contracts by refraining from stating in the collective bargaining agreement a discriminatory purpose, the duty of the bargaining agent could be completely avoided.

The opinion of the Court of Appeals appears to be another example of the not unfamiliar practice of narrowing a broad and socially constructive decision by this Court and construing it as a mere restatement of well accepted principles.[2]

Certain of the cases decided by State Supreme Courts discussed above interpreted the *Steele* and *Tunstall* cases in a wholly different light. In *Griffin v. Gulf and Ship Isle R. Co.*, supra, the Supreme Court of Mississippi held that the Brotherhood had breached its duty to represent minorities within its craft or class when it failed to disclose to the Rail-

[2]See Judge Roche's characterization of a portion of the *Steele* and *Tunstall* rulings as "* * * simply the statement of an elementary principle of contract law." (R. 140-141.)

road Adjustment Board the discriminatory effect of an award which it sought. The Supreme Court of Errors of Connecticut in *Crowell v. Palmer,* supra, entertained a suit for injunctive relief where the plaintiffs were not members of their sole bargaining agent and where they complained of a breach of the collective bargaining agreement in the assignment of overtime work.

In this case the Railroad and the Union wrote a collective bargaining agreement which did not directly require discrimination for its performance. The contract did, nevertheless, lay the basis for the discrimination that was practiced when it set up seniority groups, and provided for assignment of new employees to one of those groups *without stating any basis upon which the group was to be chosen.* Petitioners here do not agree that such a contract is a non-discriminatory contract. Nevertheless, assuming that it is correct to characterize it as a non-discriminatory contract, it affords a perfect example of the method by which the duty imposed by the Railway Labor Act upon collective bargaining agents may be avoided if the decision of the Court of Appeals is correct. Performance of the contract is completely consistent with discrimination. So long as a new employee is assigned to one of the seniority groups the contract obligation has been met. Where the practice of the Railroad, assented to by the Union, is to assign white employees to a higher and Negro employees to a lower seniority group, no action for breach of contract will lie. Unless the Courts can recognize this discrimina-

tion, and grant relief against it, the rule of *Steele* and *Tunstall* becomes completely meaningless.

2. The decision of the Court of Appeals is in direct conflict with the decisions of Supreme Courts of several states.

The Court of Appeals in this case has held that the Courts have no jurisdiction to afford relief for discrimination which occurs only in the performance of collective bargaining agreements. An examination of the allegations of the complaint (R. 5[3] and 155[4]) discloses that petitioners are not complaining of a breach of the agreement, but of discrimination carried out in accordance with the agreement. Even assuming, however, that this is a case where the gravamen of the complaint is a breach of the collective bargaining agreement, the decision of the Court of Appeals is in direct conflict with the decision of the Supreme Court of Errors of Connecticut in *Crowell v. Palmer,* 134 Conn. 502, 58 A. (2d) 729. In that case the Connecticut Court reversed the lower Court which had held that the plaintiffs in that case must exhaust their administrative remedy before the Railroad Adjustment Board before the Court could afford them relief against discrimination in the assignment of overtime work by their collective bargaining agent. There was no provision in the collective bargaining agreement,

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[3] "Plaintiffs were and each of them was accorded a seniority date in accordance with *Part I Article IV Rule 17 in the seniority Group and Class designated by the Railroad* * * *"

[4] "The said agreement did not provide any standard of adjudication by which it could be determined in which of the several seniority Groups and Classes new employees should be given seniority dates."

so far as appears from the opinion, by which this discrimination could be justified.

Likewise, in *Edelstein v. Duluth M. & I. R.R. Co.*, 225 Minn. 519, 31 N.W. (2d) 465, the Supreme Court of Minnesota held that railroad employees could sue the Railroad for back pay for discharge in violation of the seniority rights accorded them under a collective bargaining agreement, even though they had not exhausted their administrative remedies under the Railway Labor Act.

Again in *Griffin v. Gulf and Ship Isle R. Co.*, 198 Miss. 458, 21 So. (2d) 816, the Supreme Court of Mississippi held that the Court had the power to afford relief to Negro firemen who had been discriminated against in violation of the collective bargaining agreement governing their employment, where the respondent Railroad and respondent Union relied for defense on an award of the Railroad Adjustment Board. The Court found that the award of the Board was void because it had been obtained by the parties to the agreement without disclosing to the Board the discrimination of which the plaintiffs in that case complained. In such a case, the Court found that the plaintiffs had not, in fact, been represented before the Board, and were not parties to the proceedings before the Board. The plaintiffs had, therefore, not exhausted their remedies before that Board. The Court, nevertheless, found jurisdiction in the Courts to give relief to the plaintiffs.

The Supreme Court of Missouri in *State ex rel. St. Louis-San Francisco Ry. v. Russell*, 356 Missouri 975,

219 S.W. (2d) 340, considered a dispute between Negro porters and the Railroad, where the parties claimed discrimination by the Railroad in the elimination of jobs and the creation of new jobs under the jurisdiction of unions which did not represent the plaintiffs. Noting that the plaintiffs were members of a union of Negro porters, which was their collective bargaining agent under the act, the Court distinguished such a case from the situation presented in the *Steele* and *Tunstall* cases, where there was a conflict between a minority of the Class represented by their collective bargaining agent, and the bargaining agent. The Court remanded the parties to their administrative remedies.

A direct conflict between those decisions and the decision of the Court of Appeals below makes it extremely important that the law on this subject be clarified by this Court.

3. The practical consequence of the decision of the Court of Appeals is to deny petitioners any effective remedy whatever.

The Courts, including this Court, have recognized that when there is a conflict in interest between a minority within a Class or craft, represented by the sole bargaining agent under the Railway Labor Act, and the majority of the Class or craft, the Railroad Adjustment Board provides no adequate forum for the adjudication of this clash of interest. This was noted particularly by Mr. Justice Reed in his dissent in *Slocum v. D. L. & W. R. R. Co.*, 339 U.S. 239, where he points out, citing the Attorney General's re-

port on the Administrative Procedure Act, Senate Document No. 10, 77th Congress, that historically workers, who have not been represented before the Adjustment Board by their collective bargaining agents, have been unable to obtain hearings.

This is borne out by the facts in several of the decisions relied upon by petitioners here. In *Crowell v. Palmer,* the Supreme Court of Connecticut found that employees who complained of discrimination against them by their collective bargaining agent had been *unable to secure a hearing* before the Railroad Adjustment Board.

In *Griffin v. Gulf and Ship Isle R. Co.* the collective bargaining agent, together with the Railroad, had appeared before the Board and obtained an order which, the Railroad and the Union contended, permitted discrimination against Negro firemen. This award had been obtained by the failure of the collective bargaining agent and of the Railroad to disclose to the Board that it violated the rights of a minority within a Class or craft represented by the Union.

In *Edwards v. Capitol Airlines,* 176 F. (2d) 755, the Court of Appeals for the District of Columbia held in a dispute between the company and a minority of members of their collective bargaining agent, that an award of a mediation board was judicially reviewable, where the interests of the minority were contrary to the interests of the majority, despite language in the collective bargaining agreement making such awards final and binding upon all the parties. The

reason assigned by the Court was that, where the minority is represented in the proceedings by a hostile union, it cannot be presumed that the minority will obtain a fair hearing.

All of these cases demonstrated that the practical application of the Court of Appeals is to deny these petitioners any remedy whatsoever.

The importance of this decision, if it is followed in other jurisdictions, is apparent from a glance at the number of cases which in the past few years have reached the Courts of last resort, in which the problems presented were the same as those here. It is apparent from a reading of these cases that there is a move afoot within the established railroad unions to drive Negro workers out of the field. This is evidenced in the *Steele, Tunstall* and *Graham* cases most clearly, but also in many of the cases relied upon by petitioners here. The decision of the Court of Appeals, in this case, if followed, will effectively assist this drive to eliminate Negroes from employment. The number of workers affected may well extend eventually to all the Negro railroad workers in the United States. The effects of this judicial sanction of discrimination upon our foreign relations and upon our domestic political health needs no lengthy discussion.

4. This case presents a question of importance in the field of legislative and judicial regulation of trade unions and the collective bargaining process beyond the field of railway labor alone. The Supreme Court of California in *James v. Marinship,* 27 Cal. (2d) 795,

and *Williams v. Boilermakers Union,* 27 Cal. (2d) 586, and other cases, and the Supreme Court of Kansas in *Betts v. Easley,* supra, find in the decisions of this Court, and particularly in *Railway Mail Assn. v. Corsi,* 326 U.S. 88, 89 L. Ed. 2072, 65 S. Ct. 1483, a national policy which requires that trade unions who act as sole bargaining agents under federal legislation are affected with a public interest, and must protect the rights of all racial minorities and afford them equal opportunity for membership in and for the services of the union. If it is true that such a national policy exists, and if the *Steele* and *Tunstall* decisions are expressions of such a policy, then there is a conflict in principle between the decision of the Court of Appeals in this case and such national policy.

Such a conflict is of importance to all courts and administrative agencies which are confronted with cases involving discrimination by dominant trade unions. If the policy is no more than a declaration of hope or belief, then the decision of the Court of Appeals in this case may well stand as a declaration that such is the case. If, on the contrary, it is a national policy which the Courts will enforce, then the decision of the Court of Appeals must be reversed in order that all Courts and all administrative agencies faced with a similar problem will look beyond the words of the collective bargaining agreements to the practices of the parties, and stamp out discrimination by trade unions and employers.

CONCLUSION.

For the reasons stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
January 12, 1951.

Respectfully submitted,
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